

Docket No.: X-9281

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Applic. No. : 10/776,689 Confirmation No.: 3830
Inventor : Scott Dresden
Filed : February 11, 2004
Title : Statistical and Voyeuristic Link Behavioral Tracking
and Presentation Tools
TC/A.U. : 2452
Examiner : Dohm Chankong
Customer No. : 24131

Hon. Commissioner for Patents
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Sir :

This is an appeal from the final rejection in the Office action dated
November 3, 2009, finally rejecting claims 8-14.

Appellants submit this *Brief on Appeal* including payment in the amount
of \$270.00 to cover the fee for filing the *Brief on Appeal*.

Real Party in Interest:

The inventor is the real party in interest.

Related Appeals and Interferences:

No related appeals or interference proceedings are currently pending which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Status of Claims:

Claims 8-14 are rejected and are under appeal. Claims 1-7 were cancelled in an amendment dated May 21, 2008.

Status of Amendments:

No claims were amended after the final Office action. *A Response under 37 CFR § 1.116* was filed on January 4, 2010. The Primary Examiner stated in an *Advisory Action* dated January 12, 2010 that the request for reconsideration had been considered but did not place the application in condition for allowance.

Summary of the Claimed Subject Matter:

The subject matter of each independent claim is described in the specification of the instant application. Examples explaining the subject matter defined in each of the independent claims, referring to the specification, as filed, by page and line numbers, and to the drawings, are given below.

Independent claim 8 reads as follows:

8. A method for tracking and presenting information regarding a behavior of a plurality of users on a series of web pages [page 8, line 3, entire figure, Figs. 7A-7C], which comprises the following method steps:

displaying an initial content menu screen [page 8, line 5; entire figure, Fig. 7A] with at least one link [page 8, line 6; L, Fig. 7A];

when a content user chooses a desired link [page 8, line 6; L, Fig. 7A] from the initial content menu screen [page 8, line 5; entire figure, Fig. 7A], prompting the content user for statistical information [page 8, lines 6-7; Zip, Fig. 7B] and storing the statistical information [page 8, lines 6-7; Zip, Fig. 7B] in an electronic database [page 5, line 25; Data, Fig. 4A];

after the content user has successfully entered the statistical information [page 8, lines 6-7; Zip, Fig. 7B], returning to a first content screen [page 8, lines 9-11; Zip, Fig. 7C] including links [page 8, lines 4-5; Zip, Fig. 7C] to a plurality of content screens;

recording links [page 8, lines 4-5; Zip, Fig. 7C] selected by the user from the first content screen [page 8, lines 9-11; Zip, Fig. 7C] as long as choices [page 8, lines 4-5; Zip, Fig. 7C] selected by the user are recordable; and

replaying the recording of at least one of the choices [page 8, lines 4-5; Zip, Fig. 7C] selected by the user in the perspective of the user and in correlation with the statistical information [page 8, lines 6-7; Zip, Fig. 7B] in a browser simulator [page 10, lines 18-19; entire figures, Figs. 10E-10H].

Independent claim 12 reads as follows:

A method for presenting a statistical amalgam of link visitation behavior, which comprises the steps of:

indexing [page 6, line 26] a plurality of site visitors;

detecting an activation event [page 10, line 3; T₀, Fig. 9A] caused by the site visitors;

recording [page 6, line 26] at least one action of each of the site visitors, and storing the at least one action in accessible electronic storage [page 6, line 16; R, C, Fig. 4B];

selecting an index criteria [page 11, lines 17-19; Zip, entire figure, Fig. 13C] based on a criteria action from the at least one recorded action [page 6, line 26];

recalling [page 6, line 17] all stored actions from all indexed recorded data matching the index criteria [page 11, lines 17-19; Zip, entire figure, Fig. 13C];

statistically compiling [page 9, line 27] the recalled stored actions; and

presenting the statistically compiled actions [page 9, line 27] in at least one browser simulation [page 11, lines 20-24; entire figures, Figs. 14A-14D] being displayed on a display.

Independent claim 14 reads as follows:

A system for studying a behavior of visitors to an Internet site, the system comprising:

an indexing system [page 6, line 16; R, C, Fig. 4B] for identifying a plurality of visitors;

an event initiation module [page 7, line 20; init .F, Fig. 6] for triggering a recording [page 6, line 26] of a browser behavior of each of the plurality of visitors;

an event termination module [page 7, line 29; 5D, Fig. 6] for terminating the recording [page 6, line 26] of the browser behavior;

data storage [page 6, line 16; R, C, Fig. 4B] coupled with the Internet site;

a behavior organization module [page 6, line 16; R, C, Fig. 4B] coupled with said data storage [page 6, line 16; R, C, Fig. 4B], said behavior organization module [page 6, line 16; R, C, Fig. 4B] configured to retrieve selected recordings [page 6, line 26] from said recording and compile data [page 6, line 18] representative of at least some of the visitors' browser behavior, wherein said behavior organization module [page 6, line 16; R, C, Fig. 4B] uses at least one criteria [page 11, line 17, criteria 1, Fig. 13C] to select the selected recordings [page 6, line 26]; and

a browser simulator [page 11, lines 20-22; entire figure, Fig. 14A] configured to take data [page 6, line 18] from said behavior organization module [page 6, line 16; R, C, Fig. 4B] and to display a browser simulation [page 11, lines 20-24; entire figures, Figs. 14A-14D]

based on said compiled data [page 6, line 18] representing the browser behavior of at least some of the plurality of visitors.

Grounds of Rejection to be Reviewed on Appeal

1. Whether or not claims 8-11 are obvious over patent application publication US 2003/0053420 A1 to Duckett et al. in view of patent application publication US 2004/0176992 A1 to Santos et al. under 35 U.S.C. § 103.
2. Whether or not claims 12 and 13 are obvious over patent application publication US 2004/0176992 A1 to Santos et al. in view of US patent No. 7,296,080 B2 to Rowley et al. under 35 U.S.C. § 103.
3. Whether or not claim 14 is obvious over patent application publication US 2004/0176992 A1 to Santos et al. in view of US patent No. 7,296,080 B2 to Rowley et al. and US patent No. 6,877,077 B1 to Hentzel et al. under 35 U.S.C. § 103.

Argument:

Claims 8-11 are not obvious over Duckett et al. in view of Santos et al.

Claim 8 includes a step of replaying the recording of at least one of the choices selected by the user in the perspective of the user and in correlation with the statistical information in a browser simulator. The Examiner has alleged that the teaching in Santos et al. would have provided a suggestion to modify the teaching in Duckett et al. to include the referenced step of claim 8.

Paragraphs 152-173 of Duckett et al. teach a load testing tool. At a number of end user communication units 1, the activity of the user of the communication unit 1 is recorded as a script. A large number of these scripts can be run on the separate end user communication units 1 to simulate the effect that the service is experiencing heavy usage (See paragraph 153). By using the computing power of a large number of the end user communication units 1, the amount of processing power required at the central server 41 is lowered (See paragraph 173). Duckett et al. appear to teach typical load testing in that they want to

test the situation where the system is experiencing heavy usage (See paragraph 153).

The teaching in Santos et al. is not related to the type of load testing performed in Duckett et al. Santos et al. are not in any way concerned with testing the situation where a website is experiencing heavy usage. Rather, Santos et al. want to provide website customers with an objective rating system that is useful in deciding whether to use one website rather than one of many other similar websites. This rating system also provides website operators with a way of informing website customers that their website performs better than other similar websites (See paragraph 3). Santos et al. believe that websites will perform differently for different customer segments and therefore Santos et al. construct an objective rating system that rates each website for different segments of customers (See paragraph 31). There is no teaching in Santos et al. that this objective rating system is in any way related to load testing. Unrelated to the teaching in Duckett et al., Santos et al. focus on the behavior of customer segments and provide an objective rating for each customer segment because of their belief that the performance of a website depends on the typical behavior of the members of a particular customer segment. This has nothing to do

with the load testing of Duckett et al. that simulates heavy usage of a website. There is absolutely no teaching that would have suggested running the scripts of Duckett et al. in correlation with statistical information in a browser simulator and therefore the invention as defined by claim 8 would not have been suggested.

In the rejection of claim 8 in the Office action mailed November 3, 2009, the Examiner appears to allege that Santos et al. would have suggested running the scripts of Duckett et al. based on demographic information (See the bottom of page 7 of the Office action). Beginning at the fourth line from the bottom of page 8 of the Office action, the Examiner attempts to justify this allegation by stating, "For example, Santos discloses that "demographic data obtained from a customer can be used to develop better simulations of web-page activity which provides better evaluations of a website [0014, 0027]". Neither paragraph 14 nor paragraph 27 of Santos et al. teach that demographic data obtained from a customer can be used to develop better simulations of web-page activity which provides better evaluations of a website". Paragraph 14 of Santos et al. teaches creating a behavior model and then interacting with a website according to the behavior model to evaluate the website's performance. Paragraph 27 of Santos

et al. teaches ways in which customer data can be collected. One of ordinary skill in the art considering the teaching in Santos et al. learns that each behavior model is used to obtain an objective rating that is useful for providing an indication of how well a website will perform for a particular customer segment.

Nothing in Santos et al. teaches or suggests that demographic data can somehow be used to improve the type of load testing performed in Duckett et al. in which a website is experiencing heavy usage. Appellant respectfully asserts that the Examiner has failed to state a valid motivation for somehow combining the teachings of Santos et al. and Duckett et al.

Claims 12 and 13 are not obvious Santos et al. in view of Rowley et al.

Claim 12 includes steps of:

statistically compiling the recalled stored actions; and

presenting the statistically compiled actions in at least one browser simulation being displayed on a display.

It appears that the Examiner is comparing the step of “statistically compiling the recalled stored actions” with the creation of the behavior model in Santos et al. (See paragraphs 16 and 28 of Santos et al.). The statistically compiled actions of Santos et al. comprise the behavior model. In order to arrive at the subsequent step in claim 12 of “presenting the statistically compiled actions in at least one browser simulation being displayed on a display”, Rowley et al. would need to teach displaying the behavior model of Santos et al. Rowley et al. however, do not teach or suggest displaying a model, such as, the behavior model. Rowley et al. only teach displaying the actual web page 700 that the user saw in his/her display (See column 6, lines 15-18). Therefore, Santos et al. and Rowley et al. would not have suggested the invention as defined by claim 12.

Further, the Examiner states that Rowley et al. would have suggested displaying the “actions” of the simulation. This is somewhat different from the analysis provided above. In this case, the Examiner alleges that the displayed material is the interaction between the website and the exerciser 24, which interacts with the website in accordance with the behavior model (See paragraph 21 of Santos et al.). Appellant

points out that claim 12 requires “presenting the statistically compiled actions in at least one browser simulation being displayed on a display”. As discussed above, the statistically compiled actions of Santos et al. comprise the behavior model - not the future interaction of the behavior model with a website. Even if Rowley et al. did suggest displaying the actions of the simulation, the invention as defined by claim 12 would not have been obtained since the behavior model would not be displayed and therefore the step of “presenting the statistically compiled actions in at least one browser simulation being displayed on a display”, would not be taught or suggested.

Further still, appellant believes that at most, Rowley et al. might have suggested displaying the webpage that the customer of Santos et al. saw when that customer’s interaction with a website was collected in order to subsequently be used to create the behavior model. Again, this would not have resulted in the invention as defined by claim 12 since the step of “presenting the statistically compiled actions in at least one browser simulation being displayed on a display”, would not be taught or suggested.

Furthermore, appellant asserts that the Examiner has not put forth a valid motivation for combining the teachings. On page 10 of the Office action, third line from the bottom, the Examiner states, “One benefit of a display is that it enables users to quickly navigate through the actions of the simulation [Rowley, column 7 <<lines 15-17>>]. The cited teaching of Rowley et al. merely relates to an advantage of a particular interactive feature of a display in which particular packets 905 can be highlighted and selected for display. The cited teaching does not provide any motivation for displaying the behavior model or, in the alternative, the interaction between the behavior model and a website.

Claim 14 is not obvious over Santos et al. in view of Rowley et al. and Hentzel et al.

Even if Hentzel et al. would have suggested incorporating an event termination module, the invention as defined by claim 14 would not have been suggested because Rowley et al. would not have suggested incorporating a browser simulator into the teaching of Santos et al. in the way required by claim 14.

Claim 14 includes, inter alia:

A). a behavior organization module coupled with said data storage, said behavior organization module configured to retrieve selected recordings from said recording and compile data representative of at least some of the visitors' browser behavior, wherein said behavior organization module uses at least one criteria to select the selected recordings; and

B). a browser simulator configured to take data from said behavior organization module and to display a browser simulation based on said compiled data representing the browser behavior of at least some of the plurality of visitors.

In alleging that Santos et al. teach paragraph A), copied above, the Examiner referenced paragraph 27 and reference numeral 16 of Santos et al.

Paragraph 27 describes step 104 of the method 101 shown in Fig. 3 and simply describes different types of customer data that may either

be requested from the customer or retrieved without expressly requesting the data from the customer. It appears likely that the Examiner meant to cite paragraph 28 in association with reference numeral 16. Paragraph 28 teaches that the data mining system 16 analyzes the customer data to create customer segments and a behavior model 56 for each of the customer segments. It appears that the Examiner is equating the data mining system 16 with the claimed behavior organization module since the data mining system 16 is configured to retrieve selected recordings from said recording and compile data representative of at least some of the visitors' browser behavior (Also see paragraph 14).

If the Examiner is equating the data mining system 16 with the claimed behavior organization module, then paragraph B), which is copied above, of claim 14 cannot be suggested by the cited prior art. Since the Examiner has equated the data mining system 16 of Santos et al. with the claimed behavior organization module, Rowley et al. would need to teach a browser simulator configured to take data from a data mining system 16 in order to suggest the limitations in paragraph B) of claim 14. Rowley et al., however contain no such teaching.

Rowley et al. teach a packet capture engine 104 that captures transmitted packets, sorting the captured packets in accordance with the time interval of capture, by IP address, or by port number, a control engine 201 that sorts the selected packets 200 into a protocol sorted list 300, a simulation engine that obtains the selected packets 200 from the control engine 201, a display engine 206 that interprets the packets and displays a web page on a computer monitor 209. Rowley et al. do not teach that the display engine 206 is configured to take data from a data mining system that searches a database for particular types of data. Therefore, the combination of Santos et al. and Rowley et al. could not have suggested the invention as defined by claim 14.

Additionally, appellant asserts that the Examiner has failed to state a valid motivation for somehow combining the teachings of Santos et al. and Rowley et al.

The Examiner states, "One benefit of a display is that it enables users to quickly navigate through the actions of the simulation [Rowley, column 7 <<lines 15-17>>]. The cited teaching of Rowley et al. does not provide a motivation to display data obtained from a data mining system. In fact, the cited teaching in Rowley et al. merely relates to an

advantage of a particular interactive feature of a display in which particular packets 905 can be highlighted and selected for display.

The honorable Board is therefore respectfully urged to reverse the final rejection of the Primary Examiner.

If an extension of time is required for this submission, petition for extension is herewith made. Any fees due should be charged to Deposit Account No. 12-1099 of Lerner Greenberg Sterner LLP.

Respectfully submitted,

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Claims Appendix:

8. A method for tracking and presenting information regarding a behavior of a plurality of users on a series of web pages, which comprises the following method steps:

displaying an initial content menu screen with at least one link;

when a content user chooses a desired link from the initial content menu screen, prompting the content user for statistical information and storing the statistical information in an electronic database;

after the content user has successfully entered the statistical information, returning to a first content screen including links to a plurality of content screens;

recording links selected by the user from the first content screen as long as choices selected by the user are recordable; and

replaying the recording of at least one of the choices selected by the user in the perspective of the user and in correlation with the statistical information in a browser simulator.

9. The method as recited in claim 8, further including the act of recording a time the user takes between each link.

10. The method as recited in claim 8, wherein the replaying step includes replaying a plurality of users' choices.

11. The method as recited in claim 10, where the replaying step includes selecting a criteria from the statistical information entered by a respective said user.

12. A method for presenting a statistical amalgam of link visitation behavior, which comprises the steps of:

- indexing a plurality of site visitors;

- detecting an activation event caused by the site visitors;

- recording at least one action of each of the site visitors, and

- storing the at least one action in accessible electronic storage;

- selecting an index criteria based on a criteria action from the at least one recorded action;

- recalling all stored actions from all indexed recorded data matching the index criteria;

- statistically compiling the recalled stored actions; and

presenting the statistically compiled actions in at least one browser simulation being displayed on a display.

13. The method of claim 12, wherein the recording step includes recording a timing of sub actions.

14. A system for studying a behavior of visitors to an Internet site, the system comprising:

an indexing system for identifying a plurality of visitors;

an event initiation module for triggering a recording of a browser behavior of each of the plurality of visitors;

an event termination module for terminating the recording of the browser behavior;

data storage coupled with the Internet site;

a behavior organization module coupled with said data storage, said behavior organization module configured to retrieve selected recordings from said recording and compile data representative of at least some of the visitors' browser behavior, wherein said behavior organization module uses at least one criteria to select the selected recordings; and

a browser simulator configured to take data from said behavior organization module and to display a browser simulation based on said compiled data representing the browser behavior of at least some of the plurality of visitors.

Evidence Appendix:

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or any other evidence has been entered by the Examiner and relied upon by appellant in the appeal.

Related Proceedings Appendix:

No prior or pending appeals, interferences or judicial proceedings are in existence which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Accordingly, no copies of decisions rendered by a court or the Board are available.